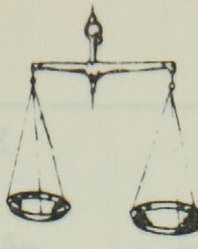


# Quid Novi



VOL. III NO. 22

McGILL UNIVERSITY FACULTY OF LAW  
FACULTE DE DROIT UNIVERSITY MCGILL

March 16, 1983  
16 mars, 1983

## *Law students rub elbows with PM hopeful*

### Tory, Tory and Mulroney

by Paul Mayer

The Law Faculty was well represented by Professors Scott and Baker and by approximately 25 students on Wednesday night when "The Friends of Brian Mulroney" staged a gathering in support of their hopeful in the Grand Salon of the Queen Elizabeth Hotel.

The evening was a well-planned media event designed to demonstrate that Mr. Mulroney inspires loyalty and has appeal that cuts across both social and party lines. On the stage, a variety of personalities announced their support for "Brian". In the audience party notables mingled with others not usually associated with the Conservative Party.

All leading media, including *Quid Novi*, C.T.V. and C.B.C. were there to record this "spontaneous" event. And in turn their presence, with their inherent cynicism, gave the affair a feeling of both artificiality and electricity. At one point, after Martha "How's the weather?" Howlett had spoken, a clearly excited Paul Dunn yelled "Hi Mike" to C.B.C.'s bulky Mike

Duffy. Duffy turned around but failed to recognize a smiling Dunn.

Prof. Baker refused to reveal his political stripes to the *Quid*, but he did lend this reporter some money to buy a few beers (conflict of interest?). Baker, ever discreet, fled when a C.B.C. radio reporter thrust his orange microphone before him. Less shy was Ian Bandeen, who willingly shared his views with the country. For reasons best known to himself, Bandeen was later seen waving a poster which said "Brian Mulroney is the man for British Columbia."

The next morning, law student Roy Millington was heard on C.B.C.'s "Day-break" describing how he met Mr. Mulroney one summer while washing the windows of his house.

A group of students, including Richard Janda, Daniel Gogek, and Alan Alexandroff, complained that the whole affair was "too slick." Janda said he could not support someone on the sole basis of a show of "friendship". He would like to hear Mr. Mulroney express his views on the issues before he could be convinced of his worth. Others consi-

Cont'd on p. 6

## Wainwright lives on

by Daniel Gogek

The fourth Wainwright Memorial Lecture, held on 17 February, was a grand success. Guest lecturer Albert J. McClean, Professor and former Dean of the University of British Columbia Faculty of Law, delivered a talk on a century-old Canadian legal conundrum: the Quebec trust.

The trust is a common law concept that was introduced into Quebec by amendment to the Civil Code in 1879 [C.C. 981a et seq.]. These provisions have proved to be consistently ambiguous at best,

and they have been the source of much controversy since their enactment. Most of the debate has centered around an attempt to reconcile this common law invention with civil law principles and institutions.

After reiterating all the familiar arguments of the debate, Professor McClean seemed to suggest that the real problem lies somewhere beneath the surface in the deeper waters of a basic difference between common and civil methodology. The civilian tends to think in terms of principles, while

Cont'd on p. 6

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## 2 Quid Novi

### TRAVAIL ESTIVAL A LA REVUE DE DROIT DE MCGILL!

A tous les étudiants de 1ère année, ainsi qu'à tous les étudiants de 2e année inscrits au Programme national:

Au nom de tous les membres de la Revue de droit de McGill, nous aimerions vous inviter à venir nous rencontrer à notre session d'information, qui aura lieu dans le "Common Room", le mercredi 30 mars à 12h00. Nous aurons alors la chance de discuter du travail à la Revue, de la procédure de sélection du prochain Comité de rédaction adjoint et des possibilités de travailler avec nous cet été. Il y aura aussi une petite exposition de notre processus de publication. Pour les affamés, les beignes et café seront servis.

Nous sommes tous enthousiastes face à l'année qui vient. Déjà, plusieurs projets se préparent pour le prochain volume. L'an prochain, nous aurons grand besoin d'un Comité adjoint en mesure d'appuyer nos efforts. La Revue publie dans les langues française et anglaise depuis déjà trente ans, jouit d'une bonne réputation partout au monde et joue un rôle important à la Faculté. Nous espérons donc vous rencontrer le 30 mars prochain.

**Daniel Gogek**  
Rédacteur en chef désigné  
Editor-in-Chief-elect

**Stephen Toope**  
Editor-in-Chief  
Rédacteur en chef

### SUMMER WORK ON THE MCGILL LAW JOURNAL!

To all first year students and second year students in the National Programme:

On behalf of all members of the McGill Law Journal, we cordially invite you to attend our information meeting on Wednesday, March 30th at 12:00 p.m. in the Common Room. We will be talking about the work on the Journal, the selection process for next year's Junior Board, and the type of work that you may become involved in this summer. There will also be a display of the entire publication process. In addition, you can get a hearty meal of coffee and donuts.

We are very enthusiastic about the prospects for the upcoming year. A number of major projects are already being considered. But there will be a great deal of work, and we will need a strong Junior Board to shoulder many of the responsibilities. The McGill Law Journal has published in French and English since its inception and is a highly respected legal periodical. We have subscribers from all over the world. The Law Journal is an important tradition at McGill and we encourage all of you to come to our meeting.

## Prof. Summers

Prof. R.S. Summers of Cornell Law School will give 2 presentations this week. He will talk on Pragmatic Instrumentalism in Prof. Baker's Legal History Class at 12 p.m. on Thursday, March 17 and on Good Faith in Contract Law in Prof. Bridge's rescheduled Contracts class at 12:00 p.m. on Friday, March 18 (Moot Court).

Prof. Summers is an authority on Contract Law and Jurisprudence. He is a prolific writer both areas. Students may wish to consult the following articles: Summers, "Good Faith" in General Contract Law and the Sales Provisions of the Uniform Commercial Code, 54 Va. L. Rev. 195 (1968); Summers, The General Duty

of Good Faith -- Its Recognition and Conceptualization, 67 Corn. L. Rev. 810 (1982); Summers, Pragmatic Instrumentalism in Twentieth Century American Legal Thought -- A Synthesis and Critique about our Dominant General Theory about Law and its Use, 66

Corn. L. Rev. 861 (1981). He is also the author of the following books: Instrumentalism and American Legal Theory (E90); Law; its Nature, Functions and Limits (2d. ed.) (K83L H83.2), (with J.J. White) Hand-Uniform Commercial Code (KLL83 W58) (2nd ed. on reserve).

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# Why McGill?

by Rick Goossen

Like any law student, I am often asked, "Why did you come to McGill?" The questioner, if a fellow law student, will expect one of the pat answers. For example, in a solemn tone I could explain that after perusing 13 law calendars and examining the course selection, professors' credentials, and the number of female students in the program, I chose McGill.

Or, bubbling with pride, I could declare to a curious relative that McGill -- that magic name -- has a première reputation in Canada and abroad and that there was no real choice to be made.

Whether true or not, these replies are not mine. Instead, my answer is "Schwartz".

"Ah..." the puzzled inquirer says, "you mean the Schwartz Scholarship covering tuition fees, room and board, and tickets to Skit Nite?"

"No," I respond. "Actually..."

"Ah..." he continues, "the Schwartz Center for promoting or establishing the public image of the legal profession in Canada?"

"Close, but..."

"It has to be the Schwartz Program: six degrees in five years -- guaranteed to impress prospective employers and clutter up resumes?"

"No!"

"All it could be, then, is the Schwartz Chair to infuse the Faculty with fresh ideas so that professors will have something to

do between the same arid lectures."

Finally, seizing the opportunity to grab the conch, I say, "Chez Schwartz Charcuterie Hébraïque de Montréal Inc."

"What?! You came 5,000 kilometers for a restaurant?"

"That's a crass way to put it, but yes, it's true. Sit on this chair while I stretch out on the couch and tell you about it."

There I was three summers ago, straight from a sheltered habitat, not knowing what awaited me so far from the Rockies. My friend and tour guide for the weekend directed me to Boul. St. Laurent. As we walked down the street, I smelled a faint tantalizing aroma in the distance. My pace quickened, my mouth watered, I tripped on a crack in the sidewalk and there I was! Schwartz's!

I sat down and ordered a platter. It came at 4:43 p.m. on August 27, 1980. Schwartz's claimed yet another addict. I had experienced "smoked meat heaven."

Realizing my stay in Montreal was rapidly drawing to a close, a state of melancholia swept over me. Should I stay and live on Boul. St. Laurent? Should I go back to Vancouver and study history? Rationality ruled over emotion. I reluctantly used my return airfare.

Vancouver supports many addictions, but not mine! A Schwartz fix couldn't be bought at any price. After a month, the withdrawal symptoms started. Nightmares, vomiting, nervous disorders. A cure had to be

found.

I put my diminishing energy to the task. Alas, I thought, there must be something I can do in Montreal to be close to the dealers of Schwartz's "Fameux smoked meat".

Then it dawned on me -- go to Montreal, soak up the flavour of the great city, and cater to my Schwartz passion all under the guise of studying law at McGill.

I mailed away for an application form. To avoid the risk of discrediting my application, I concealed my true intentions. Interests and activities? I had none. Why do you want to study law at McGill? I didn't know.

I mailed in my application fee, the equivalent of two fixes at Schwartz's.

Then I heard! I'd been accepted. Life would be liveable again. No more depressions and disillusion. I could now satisfy my craving at my own pleasure. My joy was immense.

So the beleaguered questioner asks, "That's it, that's your reason for choosing McGill?"

"Yes," I reply in a daze, "...Schwartz's."

The Phonathon held over Study Week raised \$1229 in pledges. The Committee would like to thank the volunteers who worked so hard, especially those from Quid Novi and Forum National including Brian Mitchell, Gary Lawrence, Demetrios Xistris, and Dean Brierley for his support and participation. Also, Mr. G. Ross of the Alma Mater Fund for his direction and tremendous organization.

Christopher Broadbent



# Quid Novi

Quid Novi is published weekly by the students of McGill Faculty of Law. Weekly meetings are held every Monday at 1 p.m. in Room 204. This week's Special Guest Appearances in alphabetical order are: L. Bailey, D. Barker, P. Eliadis, S. Fisher, I. Fraser, D. Gogek, R. Janda, P. Mayer, B. Mitchell, H. Pallard, J. Rikhof, D. Sokolyk, M. Turcotte, J. Vance, G. Witte, and D. Xistris.

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Quid Novi est une publication hebdomadaire assurée par les étudiants de la faculté de droit de l'université McGill, 3644 rue Peel, Montréal, H3A 1W9. La publication est rendue possible grâce à l'appui du bureau du doyen, de l'Association des étudiants en droit ainsi que par le financement individuel des étudiants. Les opinions exprimées sont propre à l'auteur. Toute contribution n'est publiée qu'à la discrétion du comité de rédaction et doit indiquer l'auteur ou son origine.

## Editorial A Plug for Participation

By nature law students cannot afford to be apathetic. Upon leaving law school and entering "the real world", we will be measured by our ability to perform. The same standard can be applied to us here and now. Participation in the Faculty community is especially important in law schools because as future lawyers, part of our role will be to develop social institutions. If we are going to participate in such activities outside the law school, we should be able to take some of the responsibility for what happens within it. Thus it is not enough to be dissatisfied or apathetic since part of our education is to carry on activities like Women and the Law, Forum National, the Bookstore, etc., and to make them work.

The student who says: "Sure, I want to work on the Law Journal. It looks good on my C.V." has forgotten the original value of this activity. The significance of the Law Journal lies in its contribution to legal scholarship, to the legal community and by extension to the community at large. The same reasoning can be attributed to other law school activities.

Not taking an active role in one's institutions suggests complacency. Complacency generally characterizes a self-satisfied elite that is resting on its laurels. The onus is now on us to prove the contrary.

Editorial Board, Quid Novi

## TA's

Art faculties have 'em. Science faculties have 'em. We need 'em. Teaching assistants who can mark papers and assignments are a must if this faculty is to run with any semblance of promoting the use of written assignments by students.

In my contracts class, our second assignment is somewhat overdue. Lazy teacher. Nasty teacher. I took the course because I wanted to do the assignments. But if you stop and think for a bit, it will dawn on you that it could take a full forty-hour work week's worth of time to correct a set of lengthy assignments. That is a lot of time. Add onto that a professor's workload if he or she teaches full-time. Add onto that the demands made on a professor who may be supervising more than ten essays, and the workload becomes staggering.

Assignments are an invaluable means of getting feedback on one's performance, but their use is severely limited by the time constraints imposed on our professors. Why not have upper-year students hired to mark assignments? Why not have graduate students hired to supervise essays? Some professors might object that students are not qualified to correct assignments, but we are qualified to participate in marking Moots and Tutorial assignments. With a professor's supervision, there is no reason to reject the implementation of a full teaching assistant program.

Pearl Eliadis



# Law school theft

by Joanie Vance

What's it like to be in law school and to steal? Perhaps I've been insulated from this phenomenon in years past. Of course I'd always heard about thefts that were in their perpetrator's intent, acts of sabotage -- case briefs suddenly missing the week before exams, pages torn out of case reports and statute books -- but this year, I've heard of, and experienced, thefts that are motivated by a simple desire to steal, carried out with an awareness of the identity of the victim. Well, before pre-exam paranoia could cause a spontaneous ripoff of study briefs or summaries, people have returned to their library carrels to find books and class notes taken. Someone stole a skit night poster from the west stairwell less than 24 hours after it had been put up to advertise the event. The poster -- black paper with glitter spotlights lighting up the words "E.T., Q.C.", and a painstakingly drawn extraterrestrial -- had taken hours to prepare. We've all seen signs asking that favourite pens and wallets be returned, no questions asked. And this week, I got a personal taste of all this when my Civil Code (with my name in it) was taken from the top cubicle of my locker, where the lock is broken.

Lord knows, we all have moments when we think that everyone else in this place is more together, more intelligent, happier and bound to be more successful than ourselves. Most of us just keep on slogging, trying to pay our dues and stay sane. We have our squabbles between friends, and flareups on a tense day. But we would never think of dealing with our pain or frustration

by hurting others, especially in such a way as to remain anonymous. That doesn't have to do with being angry with a particular person, then setting him up for an anonymous blow. It has much more to do with being angry with oneself, and taking it out on an available victim.

What does it feel like to see, or talk to, another student -- to ask how they're doing, what's new -- and to know that you've ripped them off? The answer is not a simple "pretty sick." This person manages to otherwise function in our midst in a manner which is presumably above suspicion. I think that stealing from one's colleagues is indicative of certain feelings, or at times, is a response caused by an inability to deal with certain feelings.

First, there is anger. People who don't have a strong or positive sense of self, who are unwilling to take responsibility for being the way they are, get angry at themselves. But it's scary to feel self-anger and not know how to change, or to accept one's weaknesses and to see them balanced by one's strengths. One way of dealing with this feeling is to take it out on others. However, it's socially unacceptable to be mean, and people tend to dislike those who lash out. Hence, the thief hurts in a covert way, separating himself from his actions, and avoiding censure. He gets a sense of power from being able to act, while not having to suffer the ostracization which he already may feel in other ways.

Second, the thief is able to assuage feelings of guilt or remorse with rationalizations. Should he realize that what he's doing is

wrong, and that it hurts others, he decides that it didn't really hurt anyone ("They don't need this poster, and I like it"; "she can afford it") or that they deserve it ("anyhow, he set himself up for it, leaving his books there"; "she's a bitch"). Labelling the victim depersonalizes the act and makes the individual into an object without feelings or concerns. This diminishes the intensity of the wrong committed.

Finally, a law student who steals from others disassociates his personal actions from his professional creed. Somewhere during the course of our education, we are introduced to legal ethics. We learn that even a substantively guilty person has the right to a technical acquittal. We wrestle with hypotheticals: what does one do if a client, during the course of a pri-

Cont'd on p. 6

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## Trusts

Cont'd from p. 1

the common lawyer in terms of problems. More tersely, the civilian usually puts law ahead of the facts while the common lawyer puts facts ahead of the law.

Professor McClean criticized current writers for their preoccupation with doctrinal consistency and their failure to analyze the real nature of the trust. Alluding to the dearth of present knowledge in legal history, Prof. McClean underscored the fact that when the trust was introduced in England 700 years ago, it was not intended to be consistent with previously established legal principles. On the contrary, it was invented to circumvent traditional rules. Professor McClean concluded therefore that the search for principle should be abandoned in favor of an effort to develop the Quebec trust into an effective legal institution that would "allow people to do with their property what they want to do with it."

## Theft

Cont'd from p. 5

vileged conversation, confesses guilt 2 years before the trial? In the middle of the trial? These questions seem far removed from our daily lives. But at some point, the thief refuses to make the connection between the ethics involved in acting on behalf of another, and the ethics involved in being oneself. He knows that it is wrong when people steal, and that sometimes they need a lawyer afterwards. But he steals. He feels that he is above the law, which again has to do with power. In the quiet of his room at night, or when he sees his victim in the halls at school, he knows that he beat the rap; and

theoretical questions about what to do if one's client tells one where the dead body is hidden seem far removed from reality.

I wish I could conclude with solutions, rather than observations. It's easy to say "all-right, you slime - cut it out!", or to extol the need for increased watchfulness and suspicion. I guess, however, that although I'll be angry as I buy a new Civil Code, my lasting feeling is one of sadness. Life is a soap opera; sometimes we're the good guys and sometimes we're the villains. But somewhere in our school, there's a person who is afraid to lay his cards out on the table and be anything at all. And somewhere in the midst of us, he is very much alone.

## PM

Cont'd from p. 1

dered the evening a success from a pragmatic viewpoint.

Over near the entrance of the Salon, the tall and dazzling Blaikie look-alike, Brian Mitchell, told the Quid: "We organized this very well. Joe Clark only got 250 people when he was here." Mr. Mulroney's nephew, Rick Elliott, felt the rally was a successful expression of support and affection. And since Mr. Mulroney has not yet declared himself a candidate, it is "hardly incumbent upon him to state his views at this stage."

The goal of the organizers was to show that Mr. Mulroney has the "grass-roots" base from which to fight a national election. They indeed showed that their friend is well-spoken, successful, has a beautiful wife, and can draw people together. It remains to be seen whether such credentials can be translated into delegate strength.

## Bulletins and Announcements

Bulletin boards have been installed throughout the building for notices and announcements -- more will be put up in the near future.

The walls should not be used for postings! The University Building Supervisor has instructed us to remove any and all notices which are posted on the walls.

Your cooperation is appreciated.

## Student Affairs

### Wanted

Volunteers are needed to act as polling clerks for the LSA Elections to be held on Thursday, March 24, 1983. Please submit your name, telephone number and available hour(s) (between 10 a.m.-5 p.m.) to Anna Chang, CRO, at the LSA office. Any help will be most appreciated. Volunteers are also needed that evening for ballot counting.

Instead of campaigning from class to class, a GENERAL ASSEMBLY will be held on Wednesday, March 23, 1983, in order to meet the candidates for the upcoming elections. It will take place in the Moot Court.

Results of the McGill Law Journal elections/Résultats des élections de la Revue de droit de McGill:

Editor-in-Chief/Rédacteur en chef.....Daniel Gogek

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.....Robert Metcalfe

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# Frankelmoigners

by Wayne Burrows

The impossible dream ended Monday night for the Flying Frankelmoigners as their play-off drive finished with a heart-breaking loss. Touted as early-season long shots, the 'Moigners steadily improved as the season progressed, and in fact at one point late in the season were tied for first place. At an emotional post-game news conference player-coach Rick "GQ" Elliott thanked his players for their dedication and drive. Chomping on a half-smoked cigar, the hard-bitten coach from Baie Comeau had the following comments about his team.

Steve Krieger: "A grizzled veteran whose steadily deteriorating body seemed to finally betray him late in the season, "Pops" will definitely give it one more fling next year."

Paul Dunn: "The 'Disco-King' was a center of controversy as his fast-paced lifestyle seemed to affect his play at times. While some felt he lacked intensity he never failed to impress the Coach with his 'Miss 'Moign Picks'".

John Webster: "In the twilight of an undistinguished career J.W. responded well under the hard but fair tutelage of Coach Elliott. His surprise trade to the McMillan, Binch Benchmen was not unexpected."

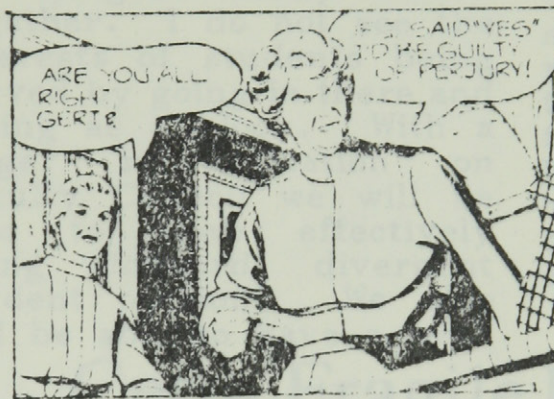
Bruce Fitzsimmons: "The Ron Leflore of the team, Bruce's repeated absences were a cause of much dissension during the season. But he plays decent guitar."

Dave Wiseman: "A high-strung kind, "The Wise"

quarterbacked the powerful Moign offence which scored 10 points in its final game."

Cliff Halickman: "The only rookie to crack the squad, "Hanger" enjoyed a fine season and will be counted on heavily next year. The only question is his ability to stand the pressure of an entire season."

Quote of the week:



## Bookstore

Yes, the Bookstore is thinking of you! That's why we're announcing our unofficial closing date: Friday, March 25, 1983 at 2 p.m. Some leftover texts have already been returned, others are going soon -- if you need a book, get it while we've still got it. And while we've got your attention -- PLEASE start thinking NOW of the hours you'll give to the Bookstore in September. You KNOW your help will be appreciated -- and isn't it nicer keeping busy for an hour than waiting in line?

**The Bookstore Committee**  
Joelle, Virginia,  
Todd and Jane

Quid Novi would like to thank Steve Fogarty for last week's pictures.

## Formation of a Criminal Law Group...Exploratory Meeting

On Monday, March 29 at 1 p.m. interested students are invited to attend a meeting in room 204 to discuss the establishment of a new group which will concern itself with criminal justice and related subjects (the foregoing phrase is deliberately as broad as I could make it). The motivation of those interested in such a project stems from the need for practical exposure to and specific technical and theoretical knowledge in what is an increasingly complex and rapidly evolving field. We feel potential criminal lawyers could benefit from an early exposure to aspects such as interrogation of witnesses, interviewing of clients and gathering of evidence. It would be profitable also to become acquainted with some of the actors and institutions in the criminal field. Hearing from experts on subjects which cannot be dealt with thoroughly in class is another possibility. Finally, such a group might be a source of research with the Faculty, for example, as an adjunct to the Legal Aid Clinic. These and other topics will be put to participants at the meeting, as well as any other ideas which might be suggested. It is hoped that the meeting will attract enough people to establish a group which could reasonably hope to begin work now on a schedule of activities for the fall.

If you need further information, contact: **Todd Sloan, BCL II.**

## B.C.L. III Students

Come FLASH with CLASS at the Union Ballroom, today at 12:00! All B.C.L. III students are encouraged to participate in what will prove to be a GREAT Class Picture to remember!